

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	File No. 0003431479
NETWORK, INC.)	
Licensee of Station WQIV646)	

ORDER ON RECONSIDERATION

Adopted: June 24, 2009

Released: June 25, 2009

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a Joint Petition for Reconsideration filed by Comm Enterprises, LLC, James A. Kay, Jr., MS Airwaves, Inc., and Marc D. Sobel (Petitioners) seeking reconsideration of the grant under Call Sign WQIV646 of the above-captioned application filed by National Science and Technology Network, Inc. (NSTN).¹ Based upon our review of the record, we grant the petition, and will reinstate the application to pending status and dismiss it in part and grant it in part.

2. *Background.* NSTN's application sought authority to operate on ten 12.5 kHz offset channels in the 470-512 MHz band at San Rafael Hills, California: 471/474.2750 MHz, 471/474.3000 MHz, 471/474.5000 MHz, 471/474.7000 MHz, 471/474.8500 MHz, 472/475.0000 MHz, 472/475.1750 MHz, 472/475.2250 MHz, 472/475.7250 MHz, and 472/475.8250 MHz. Petitioners argue that NSTN's requested operations on seven of those channels (471/474.2750 MHz, 471/474.3000 MHz, 471/474.7000 MHz, 471/474.8500 MHz, 472/475.1750 MHz, 472/475.2250 MHz, and 472/475.7250 MHz) do not provide the required interference protection to their operations because the application did not satisfy the interference protection criteria of TIA/EIA/TSB-88 (TSB-88).²

3. *Discussion.* Our engineering review confirms that the specified NSTN channels did not satisfy the requirements of TSB-88. NSTN does not dispute that the contested channels did not satisfy the requirements of TSB-88. Instead, it argues³ that Petitioners are not entitled to protection because they

¹ See Joint Petition for Reconsideration filed on June 27, 2008 by Comm Enterprises, LLC, James A. Kay, Jr., MS Airwaves, Inc., and Marc D. Sobel. NSTN filed an opposition. Opposition to Joint Petition for Reconsideration filed on July 7, 2008 by NSTN (NSTN Opposition).

² See Filing Freeze to Be Lifted for Applications under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (citing Letter from Larry A. Miller, President, Land Mobile Communications Council (LMCC), to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)). The LMCC Consensus was submitted by the LMCC in response to the Commission's direction that the private land mobile radio service coordinators reach a consensus on the applicable coordination procedures for the 12.5 kHz offset channels in the 470-512 MHz frequency band. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997). The LMCC Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability. See LMCC Consensus, Attachment at 2.

³ See NSTN Opposition at 1, 2.

are not “affected parties” under Section 90.187 of the Commission’s Rules.⁴ As we have previously noted,⁵ however, the Section 90.187(b)(2) definition of “affected licensee” expressly relates only to analyzing applications under Section 90.187, which sets forth the standards for determining whether a 150-174 MHz or 421-512 MHz band applicant will be required to monitor the proposed frequency.⁶ This is a separate requirement from TSB-88, which is used to determine whether an applicant for 12.5 kHz offset channels in the 470-512 MHz band will cause impermissible interference.⁷ Applications to which both Section 90.187 and TSB-88 apply must satisfy both standards. NSTN was required to satisfy the interference protection criteria of TSB-88. Consequently, we agree with Petitioners that the NSTN application was defective, and should not have been coordinated or granted with respect to the contested frequencies.

4. *Conclusion.* For the reasons stated above, we conclude that the underlying frequency coordination and subsequent grant of NSTN’s license for Station WQIV646 was defective. Accordingly, we will return the application to pending status and dismiss it in part as defective. Specifically, the application will be dismissed with respect to frequency pairs 471/474.2750 MHz, 471/474.3000 MHz, 471/474.7000 MHz, 471/474.8500 MHz, 472/475.1750 MHz, 472/475.2250 MHz, and 472/475.7250 MHz.

5. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the Joint Petition For Reconsideration filed on June 27, 2008 by Comm Enterprises, LLC, James A. Kay, Jr., MS Airwaves, Inc., and Marc D. Sobel IS GRANTED to the extent indicated above.

6. IT IS FURTHER ORDERED that, pursuant and Sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(a), and Sections 1.934 and 1.945 of the Commission’s Rules, 47 C.F.R. §§ 1.934, 1.945, application FCC File No. 0003431479 SHALL BE RETURNED TO PENDING STATUS and DISMISSED IN PART AND GRANTED IN PART, consistent with this *Order on Reconsideration* and Commission Rules.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATION COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁴ 47 C.F.R. § 90.187.

⁵ See National Science and Technology Network, Inc., *Order on Further Reconsideration*, 24 FCC Rcd 3577, 3579 ¶ 6 (WTB MD 2009), *review pending*; National Science and Technology Network, Inc., *Order on Reconsideration*, 23 FCC Rcd 5723, 5725 ¶ 6 (WTB MD 2008), *review pending*.

⁶ See 47 C.F.R. § 90.187(b)(2). Such monitoring is not required if the applicant has exclusive use of the frequency, or obtains written consent from all “affected licensees,” as defined in Section 90.187. See 47 C.F.R. § 90.187(b)(1), (2).

⁷ See Ralph A. Haller, *Letter*, 23 FCC Rcd 4714, 4715 (WTB/PSHSB 2008).